

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 264, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, line 3, after "(a)" insert "**This section does not apply to a**
- 2 **person whose underlying felony offense and prior unrelated felony**
- 3 **convictions are all felony drug offenses (as defined in section 8.3 of**
- 4 **this chapter)."**
- 5 Page 1, line 12, after "conviction;" insert "**or**".
- 6 Page 1, line 14, delete ";" and insert ".".
- 7 Page 1, line 14, strike "or".
- 8 Page 1, strike lines 15 through 17.
- 9 Page 2, strike lines 1 through 12.
- 10 Page 2, line 22, after "set aside;" insert "**or**".
- 11 Page 2, line 23, delete ";" and insert ".".
- 12 Page 2, strike lines 24 through 39.
- 13 Page 3, line 12, after "introduce" insert "**evidence of**".
- 14 Page 3, line 12, delete "entire criminal history" and insert "**prior**
- 15 **criminal convictions**".
- 16 Page 3, line 13, delete "as evidence".
- 17 Page 3, after line 26, begin a new paragraph and insert:
- 18 "SECTION 2. IC 35-50-2-8.3 IS ADDED TO THE INDIANA
- 19 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 20 [EFFECTIVE JULY 1, 2007]: **Sec. 8.3. (a) As used in this section,**
- 21 **"felony drug offense" means an offense to which all of the**

1 following apply:

2 (1) The offense is a felony offense under IC 16-42-19 or
3 IC 35-48-4.

4 (2) The offense is not listed in section 2(b)(4) of this chapter.

5 (b) Except as otherwise provided in this section, the state may
6 seek to have a person sentenced as a habitual drug offender for a
7 felony drug offense by alleging, on a page separate from the rest of
8 the charging instrument, that the person has accumulated at least
9 three (3) prior unrelated felony drug offense convictions.

10 (c) The state may not seek to have a person sentenced as a
11 habitual drug offender for a felony drug offense under this section
12 if the felony drug offense is a misdemeanor that is enhanced to a
13 felony in the same proceeding as the habitual drug offender
14 proceeding solely because the person had a prior unrelated
15 conviction.

16 (d) A person has accumulated three (3) prior unrelated felony
17 drug offense convictions for purposes of this section only if:

18 (1) the second prior unrelated felony drug offense conviction
19 was committed after sentencing for the first prior unrelated
20 felony drug offense conviction;

21 (2) the third prior unrelated felony drug offense conviction
22 was committed after sentencing for the second prior unrelated
23 felony drug offense conviction; and

24 (3) the felony drug offense for which the state seeks to have
25 the person sentenced as a habitual drug offender was
26 committed after sentencing for the third prior unrelated
27 felony drug offense conviction.

28 (e) A conviction does not count for purposes of this section as a
29 prior unrelated felony drug offense conviction if:

30 (1) the conviction has been set aside; or

31 (2) the conviction is one for which the person has been
32 pardoned.

33 (f) The requirements in subsection (c) do not apply to a prior
34 unrelated felony drug offense conviction that is used to support a
35 sentence as a habitual drug offender. A prior unrelated felony drug
36 offense conviction may be used under this section to support a
37 sentence as a habitual drug offender even if the sentence for the
38 prior unrelated felony drug offense was enhanced for any reason,
39 including an enhancement because the person had been convicted
40 of another offense.

41 (g) If the person was convicted of the felony drug offense in a
42 jury trial, the jury shall reconvene for the sentencing hearing. If

1 the trial was to the court or the judgment was entered on a guilty
2 plea, the court alone shall conduct the sentencing hearing under
3 IC 35-38-1-3.

4 (h) A person is a habitual drug offender if the jury (if the
5 hearing is by jury) or the court (if the hearing is to the court alone)
6 finds that the state has proved beyond a reasonable doubt that the
7 person had accumulated three (3) prior unrelated felony drug
8 offense convictions.

9 (i) The court shall sentence a person found to be a habitual drug
10 offender to an additional fixed term that is not less than the
11 advisory sentence for the underlying felony drug offense nor more
12 than three (3) times the advisory sentence for the underlying felony
13 drug offense. However, the additional sentence may not exceed
14 thirty (30) years."

(Reference is to SB 264 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 9, Nays 0.

Senator Steele, Chairperson